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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of San Diego Gas Electric Company (U902E) for Authorization to Recover Costs Related to the 2007 Southern California Wildfires Recorded in the Wildfire Expense Memorandum Account (WEMA).

Application 15-09-010
(Filed September 25, 2015)

**SCOPING MEMO AND RULING OF ASSIGNED COMMISSIONER AND
ASSIGNED ADMINISTRATIVE LAW JUDGE**

Summary

Pursuant to Rule 7.3 of the California Public Utilities Commission's (Commission) Rules of Practice and Procedure (Rules),¹ this Scoping Memo and Ruling sets forth the procedural schedule and addresses the scope of this proceeding, as well as other procedural matters, following the prehearing conference (PHC) held on February 22, 2016.

1. Background

On September 25, 2015, San Diego Gas & Electric Company (SDG&E) filed this application seeking Commission approval to recover \$379 million recorded in its Wildfire Expense Memorandum Account (WEMA). The WEMA is an account established per Resolution E-4311, to track costs from the Witch, Guejito,

¹ All references to Rules are to the Commission's Rules of Practice and Procedure, which are available on the Commission's website at: <http://www.cpuc.ca.gov/General.aspx?id=1620>.

and Rice wildfires which occurred within SDG&E's service territory in October, 2007 (2007 Wildfires). Specifically, SDG&E states that it incurred a total of \$2.4 billion in costs and legal fees to resolve third-party damage claims from the 2007 Wildfires and, if its request is granted, the cost recovery of \$379 million would lead to a residential rate increase of \$1.67 per month amortized over six years. The Commission had previously indicated in Decision (D.)12-12-029 that recovery of WEMA costs would be subject to a reasonableness review. In its application, SDG&E alleged that the reasonableness standard applies only to the utility's actions taken in settling claims from the 2007 Wildfires litigation. Hence, SDG&E requests the Commission to allow its cost recovery on grounds that the process employed in settling the claims were at the lowest reasonable level, augmented by efforts to substantially reduce the amount of wildfire costs.

Between October 23 and October 30, 2015, protests were filed and served by San Diego Consumer's Action Network (SDCAN), The Utility Reform Network/Center for Accessible Technology (TURN/CforAT), Protect Our Communities Foundation (POCF), Office of Ratepayer Advocates (ORA), and Mussey Grade Road Alliance (MGRA). Ruth Hendricks (Hendricks) filed and served a Motion for Party Status on October 2, 2015, which was granted on February 16, 2016. For the application of the reasonableness review, protestors assert that the inquiry should begin with the prudence of SDG&E's actions and decisionmaking in managing the facilities that caused the fires. TURN/CforAT proposed a two-phase approach to the proceeding whereby the first phase would address the issue of reasonableness and prudence of SDG&E's management and operation in its facilities in relation to the 2007 Wildfires, and the second phase, addressing the litigation and related costs for recovery, would only be conducted if SDG&E met its burden of demonstrating prudence in Phase 1.

The 2007 Wildfires were the subject of two prior cases at the Commission between 2008 and 2012:

- Investigation (I.) 08-11-007² (Wildfire Investigation) which concluded with D.10-04-047 approving a settlement agreement pursuant to which SDG&E paid penalties but did not admit to any safety violation or a role in the cause of the wildfires.
- A.09-08-020³ (WEBA Proceeding) which concluded with D.12-12-029 denying SDG&E's request for a wildfire expense balancing account but allowing SDG&E to keep the WEMA open. The WEMA was originally opened pursuant to Advice Letter Resolution E-4311.

In their protests, numerous parties requested that the records from these prior Commission proceedings be incorporated into the record of this proceeding.

In its Reply to Protests, dated November 9, 2015, SDG&E stressed the reasonableness standard should only be applied to its decision to pursue settlement of the claims from the 2007 Wildfires litigation, to the process it employed in settling the claims, and to its alleged efforts in reducing the costs. SDG&E opposes the proposal to conduct the proceeding in phases and the protestors' request to deem the record from prior proceedings as part of the record for the current proceeding.

On February 19, 2016, a Joint Proposed Schedule was served by MGRA, ORA, POCF, Hendricks, SDCAN, TURN, and UCAN. The Joint Proposed

² Investigation on the Commission's Own Motion into the Operations and Practices of SDG&E Regarding the Utility Facilities linked to the Witch and Rice Fires of October 2007.

³ Application of SDG&E, Southern California Edison Company, Southern California Gas Company and Pacific Gas and Electric Company for Authority to Establish a Wildfire Expense Balancing Account to Record for Future Recovery Wildfire-Related Costs.

Schedule proposed the case be litigated in phases, provided a schedule of the proceeding accompanied by a request that, in addition to phasing the proceeding, the Commission allow parties initial briefing on certain threshold legal and policy issues relating to the appropriateness of the rate recovery.

With the aforementioned central disputes between the parties in the background, the assigned Administrative Law Judge (ALJ) convened a PHC on February 22, 2016.

2. Scope of Proceeding

The ultimate issue to be addressed in this proceeding is whether, as a matter of law and policy, the Commission should authorize SDG&E's application to recover from ratepayers costs related to the 2007 Wildfires recorded in its WEMA. As a first step, the Commission must determine the appropriate subject matter calling for the reasonableness review. After reviewing the documents filed in this case and hearing arguments at the PHC, we adopt a two-phase approach with a separate reasonableness review in each phase. We find that this approach will be fair and make the most efficient use of party and Commission resources. In addition, the two-step reasonableness review process will make it easier to distinguish Phase 1 issues related to prudent management of facilities from Phase 2 issues related to settling of legal claims.

For Phase 1, the scope of the matter properly before the Commission is whether SDG&E's operation and management in its facilities prior to the 2007 Wildfires were reasonable. Prior Commission decisions indicate that a reasonableness standard should entail a review on the prudence of SDG&E's actions leading up to the fire. In D.14-06-007, the Commission held that for costs to be found reasonable, the utility must prove that they were:

prudently incurred by competent management exercising the best practices of the era, and using well-trained, well-informed and conscientious employees who are performing their jobs properly. . . . [T]he Commission can and must disallow those costs: that is unjust and unreasonable costs must not be recovered in rates from ratepayers.⁴

This is consistent with the Commission's obligation under Pub. Util. Code § 451 to ensure that resulting rates will be just and reasonable and that service is provided in a safe manner.

For Phase 2, the scope of the matter properly before the Commission is whether SDG&E's actions and decisionmaking in connection with settling of legal claims and costs in relation to the wildfires were reasonable. In their protests, parties identified several sub-issues that would need to be examined in Phase 2 and stated that this review would require additional information from SDG&E. In the event that a Phase 2 is required, the scope and the testimony and information needed to resolve it will be further refined at a Phase 2 PHC.

In addition to the reasonableness reviews required for Phase 1 and Phase 2, a majority of the intervening parties jointly recommended that the schedule include an opportunity to brief legal issues that could be addressed prior to beginning any reasonableness review. The intervening parties described examples of these threshold legal and policy issues:

⁴ D.14-06-007 at 31.

Whether rate recovery would create a moral hazard . . . the fairness of imposing rate increases on San Diego customers, particularly those who were also victims of the fires . . ., and whether SDG&E has already been compensated for such risks in its rates and whether it warrants special recovery outside of the normal general rate case process . . . ⁵

We agree with the intervening parties that setting an early briefing schedule for the threshold issues identified in the paragraph above (Threshold Issues) will benefit the efficiency and fairness of the proceeding.

Safety remains an important focus of Commission proceedings and safe operation of facilities is an important responsibility of each utility. In addition to the specific Phase 1 issues below, and any the issues scoped for Phase 2 (if Phase 2 is necessary), safety concerns are within the scope of this proceeding.

The scope of Phase 1 is as follows:

- (1) Whether any of the Threshold Issues serves as a bar to recovery; and
- (2) Whether SDG&E's operation, engineering and management the facilities alleged to have been involved in the ignition of the fires was reasonable. Each of the three fires should be addressed separately.

3. Proceeding Schedule

After discussion during the PHC, the ALJ directed the parties to meet and confer to devise a proposal for the proceeding schedule. A proposed schedule was received on March 7, 2016, accompanied by statements that SDG&E and the protesting parties could not reach an agreement as to the extent of the

⁵ Joint Proposed Schedule at 3.

supplements required for Phase 2 testimony, and whether Phase 2 schedule should be deferred until a post-Phase 1 PHC or not.

We find that the proposed schedule for Phase 1 is reasonable and we adopt it with the following changes: First, SDG&E argued that it will need a longer period of time to prepare rebuttal testimony in response to the many parties expected to serve testimony. Second, the schedule proposed by the intervening parties would have included December evidentiary hearings which would conflict with the Commission's existing schedule and with holidays and winter breaks that have already been planned.

Event	Date
Application filed	September 25, 2015
Prehearing Conference	February 22, 2016
Scoping Ruling issued	April 2016
SDG&E to make electronically available materials listed in Appendix A of October 30, 2009 Settlement Agreement in I.08-11-006 and I.08-11-007	April 25, 2016
Opening Briefs on Threshold Issues regarding SDG&E's right to recover costs from ratepayers	May 11, 2016
Reply Briefs on Threshold Issues	May 26, 2016
Proposed Decision on Threshold Issues (if applicable)	July/ August 2016
ORA Testimony in Phase 1	October 3, 2016
Intervenor Testimony in Phase 1	October 17, 2016
Phase 1 Rebuttal Testimony	December 16, 2016
Phase 1 Evidentiary Hearings	January 23-27, 2017

Event	Date
Opening Briefs on Phase 1	February 20, 2017
Reply Briefs on Phase 1	March 6, 2017
Phase 1 Proposed Decision	June 2017
Phase 2 Prehearing Conference	2 weeks after final Phase 1 Decision (if necessary)
Phase 2 Procedural Schedule	To be determined at Phase 2 PHC

There will be at least one day of Public Participation Hearings (PPH) for Phase 1 of this proceeding. As proposed by the joint parties, the PPH will take place between intervenor testimony in Phase 1 and Evidentiary Hearings. The exact date and location will be determined by ruling at a later date.

This proceeding will be submitted upon the filing of reply briefs, unless the assigned ALJ or assigned Commission directs further evidence or argument.

The schedule may be modified by the assigned ALJ or assigned Commissioner as required to promote the efficient and fair resolution of the proceeding. Consistent with Pub. Util. Code § 1701.5, it is anticipated that Phase 1 of this proceeding will be completed within 18 months of the issuance of this scoping ruling, and that a Phase 2 of this proceeding will be subject to a separate scoping ruling.

Although the schedule does not anticipate the need for workshops, if there are any workshops conducted in this proceeding, notices of such workshops will be posted on the Commission's Daily Calendar to inform the public that a decisionmaker or an advisor may be present at those meetings or workshops. Parties shall check the Daily Calendar regularly for such notices.

4. Discovery

The parties may immediately engage in discovery, provided that it is limited to the scope under Phase 1. The timing for discovery related to Phase 2, if necessary, will be addressed at the Phase 2 PHC.

Per discussion during the PHC, SDG&E will make discovery materials and data request responses available to any party that requests such materials. The goal of sharing this information is to reduce the need for inefficient multiple data requests from different parties. We direct SDG&E to make these materials available in an efficient manner, to be determined at SDG&E's discretion drawing on SDG&E's experience with these matters in other multi-party proceedings.

Pursuant to Rule 11.3, parties should meet and confer and attempt to resolve any discovery disputes before contacting the ALJ.

5. Exhibits from Prior Proceedings

In evaluating whether to admit any of these existing exhibits into the record of this proceeding, we must be cognizant of the purpose for which the exhibits were originally admitted, the relevance of the material to this proceeding, and the risk of admission of exhibits being prejudicial. For example, the exhibits admitted by D.10-04-047 in the Wildfire Investigation were admitted, without cross-examination, solely for the limited purpose of facilitating the Commission's evaluation of the Settlement Agreement. The Settlement Agreement specifically provides that these exhibits "shall not be deemed an admission by SDG&E in any other proceeding."⁶

⁶ D.10-04-047, Attachment 1 (Settlement Agreement) at 10.

On March 3, 2016, as directed during the PHC, UCAN provided a list of Commission decisions that articulate the allowance of importing evidentiary records from preceding dockets into successor proceedings. This list was provided to the service list on an informal basis. On March 7, 2016, in its Post Prehearing Conference Statement, SDG&E argued that the citations provided by UCAN were misused or out of context, hence would not serve as appropriate precedent. Most significantly, the most common circumstance under which importation of an existing evidentiary record was allowed was when the two proceedings were expressly linked with the second proceeding being clearly designated as a “successor” to the first. In this case, although the Wildfire Investigation and the WEBA Proceeding also addressed the 2007 Wildfires, the cases are not expressly linked. In fact, the Commission intentionally closed both of the prior cases without indicating that the evidentiary records would be appropriate for use in a later case. At this time, we remain convinced that case law does not support the wholesale importing of evidentiary records from other Commission proceedings without additional steps.

However, we agree that the contents of exhibits admitted into the evidentiary records of the Wildfire Investigation and the WEBA Proceeding could be relevant to this proceeding. To make review of these documents more efficient for the parties, we instruct SDG&E to submit these files as Supporting Documents in the Commission’s E-File system. Instructions on submission of Supporting Documents can be found below.

None of these exhibits will be admitted to the evidentiary record of this proceeding without further steps by the parties. Admission of these exhibits will be handled on a case by case basis. For example, a party seeking to move exhibits from prior proceedings into the record of this proceeding can initiate the

process by a motion. Such motion should specifically address relevance, prejudice, and how the purpose for which the exhibits would be used in this proceeding is consistent with the purpose for which they were admitted in the prior proceeding or the purpose for which the exhibit can be relied upon without further cross examination. The motion should also cite any case law that supports the party's contention that the exhibit should be incorporated into the record for this proceeding. SDG&E (and other parties) will have the opportunity to contest admission of exhibits by responding to the motion.

6. Proceeding Category, Need for Hearing, and *Ex Parte* Rules

In Resolution ALJ 176-3365, dated October 22, 2015, the Commission preliminarily categorized this proceeding as ratesetting, and preliminarily determined that hearings are necessary. No objections to the proceeding being categorized as ratesetting were raised during the PHC.⁷ Based on discussion at the PHC and filings by the parties, there are significant material issues of fact in dispute that will likely require evidentiary hearings. This Scoping Memo and Ruling confirms the categorization as ratesetting and finds that evidentiary hearings are necessary.

Ex parte communications are prohibited in ratesetting proceedings, except as allowed by Pub. Util. Code § 1701.3(c) and Article 8 of the Rules.

⁷ Reporter's Transcript at 42.

An *ex parte* communication is a written or oral communication that (1) concerns any substantive issue in a formal proceeding, (2) takes place between an interested person and a decisionmaker, and (3) does not occur in a public hearing, workshop or other public forum noticed by ruling or order in the proceeding, or on the record of the proceeding. Communications regarding the schedule, location, or format for hearings, filing dates, identity of parties, and other such nonsubstantive information are procedural inquiries, not *ex parte* communications (Procedural Communications).⁸

For this proceeding, there should be no *ex parte* communications with the assigned ALJ. Any Procedural Communications with the ALJ must be by email to the entire service list or in a public hearing, workshop, or other public forum noticed by ruling or order in this proceeding, or on the record of this proceeding. Parties must follow proper procedures before communicating with the assigned Commissioner on this proceeding. The formal Meeting Request Form for the assigned Commissioner is available at <http://www.cpuc.ca.gov/Randolph/>.

7. Presiding Officer

Pursuant to Rule 13.2(b), ALJ Jeanne M. McKinney is designated as the Presiding Officer.

8. Filing, Service, and Service List

In this proceeding, there are several different types of documents participants may prepare. Each type of document carries with it different obligations with respect to filing and service.

⁸ Rules of Practice and Procedure Rule 8.1(c).

Parties must file certain documents as required by the Commission Rules or in response to rulings by either the assigned Commissioner or the assigned ALJ. All formally filed documents must be filed with the Commission's Docket Office and served on the service list for the proceeding. Article 1 of the Rules contains all of the Commission's filing requirements. Parties must file and serve all pleadings and serve all testimony, as set forth in Article 1 of the Commission's Rules. Parties are encouraged to file and serve electronically, whenever possible, as it speeds processing of the filings and allows them to be posted on the Commission's website. More information about electronic filing is available at <http://www.cpuc.ca.gov/puc/efiling>.

This proceeding will follow the electronic service protocols adopted by the Commission in Rule 1.10 for all documents, whether formally filed or just served. This Rule provides for electronic service of documents, in a searchable format, unless the party or state service list member did not provide an e-mail address. If no e-mail address was provided, service should be made by U.S. mail. Concurrent e-mail service to ALL persons on the service list for whom an e-mail address is available, including those listed under "Information Only," is required. Parties are expected to provide paper copies of served documents upon request.

E-mail communication about this case should include, at a minimum, the following information on the subject line of the e-mail: *A.15-09-010*. In addition, the party sending the e-mail should briefly describe the attached communication; for example, *Opening Brief*.

Both an electronic and a hard copy of all filed and served documents should be served on the ALJ.

The official service list for this proceeding is available on the Commission's web page. Parties should confirm that their information on the service list is correct, and serve notice of any errors on the Commission's Process Office. Prior to serving any document, each party must ensure that it is using the most up-to-date service list. The list on the Commission's website meets that definition. Any person interested in participating in this proceeding who is unfamiliar with the Commission's procedures or who has questions about the electronic filing procedures should contact the Commission's Public Advisor at (866) 849-8390 or (415) 703-2074, or (866) 836-7825 (TTY-toll free), or send an e-mail to public.advisor@cpuc.ca.gov.

9. Electronic Submission and Format of Supporting Documents

The Commission's web site now allows electronic submittal of supporting documents (such as testimony). Parties are directed to submit their testimony in this proceeding through the Commission's electronic filing system.⁹ This submission does NOT replace service of testimony, but allows parties and non-parties to more efficiently locate testimony that has already been served.

⁹ These instructions are for submitting supporting documents such as testimony and work papers in formal proceedings through the Commission's electronic filing system. Parties must follow all other rules regarding serving testimony. Any document that needs to be formally filed such as motions, briefs, comments, etc., should be submitted using Tabs 1 through 4 in the electronic filing screen.

In addition to testimony, SDG&E is directed to submit the exhibits from prior proceedings as specifically set forth above.

Parties must adhere to the following:

- The Instructions for Using the “Supporting Documents” Feature,
(<http://docs.cpuc.ca.gov/SearchRes.aspx?docformat=ALL&DocID=158653546>) and
- The Naming Convention for Electronic Submission of Supporting Documents New in this Proceeding
Proceeding number (without punctuation)
Party (acronyms are acceptable the shorter the better because docs will have long titles)
(Proposed Exhibit Number) Note that this is intentionally in parentheses.
Subject
Witness last name (if more than 1 witness, use last name of witness appearing first in the written testimony and add et al. to signify multiple witnesses.
Example of file name:
A1707015 - CWS - (1) General Report - Duncan
- The Naming Convention for Electronic Submission of Supporting Documents that were Exhibits in Prior Proceedings
Proceeding number (from the prior proceeding)
Exhibit Number
Subject
Witness last name
Example of file name:
A1707015 CWS-1 General Report - Duncan
- Documents containing confidential information must not be submitted to the Supporting Document feature.
- The Supporting Document feature does not change or replace the Commission’s Rules of Practice and Procedure. Parties must continue to adhere to all rules and guidelines in the Commission’s Rules of Practice

and Procedures including but not limited to rules for participating in a formal proceeding, filing and serving formal documents and rules for written and oral communications with Commissioners and advisors (i.e. “*ex parte* communications”) or other matters related to a proceeding.

- The Supporting Document feature is intended to be solely for the purpose of parties submitting electronic public copies of testimony (unless instructed otherwise by the Administrative Law Judge), and does not replace the requirement to serve documents to other parties in a proceeding.
- Unauthorized or improper use of the Supporting Document feature will result in the removal of the submitted document by the Commission.
- Supporting Documents should not be construed as the formal files of the proceeding. The documents submitted through the Supporting Document feature are for information only and are not part of the formal file (i.e. “record”) unless accepted into the record by the Administrative Law Judge.

All documents submitted through the “Supporting Documents” Feature shall be in PDF/A format. The reasons for requiring PDF/A format are:

- Security - PDF/A prohibits the use of programming or links to external executable files. Therefore, it does not allow malicious codes in the document.
- Retention - The Commission is required by [Resolution L-204](#), dated September 20, 1978, to retain documents in formal proceedings for 30 years. PDF/A is an independent standard and the Commission staff anticipates that programs will remain available in 30 years to read PDF/A.

- Accessibility – PDF/A requires text behind the PDF graphics so the files can be read by devices designed for those with limited sight. PDF/A is also searchable.

Currently, the “Supporting Documents” do not appear on the “Docket Card.” In order to find the supporting documents that are submitted electronically, go to:

- Online documents, choose: “[E-filed Documents](#), ”
- Select “Supporting Document” as the document type, (do not choose testimony),
- Type in the proceeding number and hit search.

Please refer all technical questions regarding submitting supporting documents to:

- Kale Williams (kale.williams@cpuc.ca.gov)
415 703- 3251 and
- Ryan Cayabyab (ryan.cayabyab@cpuc.ca.gov)
415 703-5999.

10. Intervenor Compensation

As a means to compensate intervening parties for their substantial contributions, and as emphasized during the PHC, the Commission hereby underscores the importance of coordination between the parties as to avoid potential duplication of efforts. Parties are to note that no waiver on the deadline for filing a Notice of Intent can be granted.

11. Motion for Adoption of Protective Order

On February 19, 2016, SDG&E filed a Motion for Adoption of a Protective Order. SDG&E states the protective order would be intended to govern access to confidential, proprietary or otherwise protected materials produced by parties. Although we agree that with SDG&E’s goal of establishing a consistent procedure for treating sensitive materials during discovery, it is premature to adopt a protective order. Instead, we direct the parties to work together to

establish a procedure for handling these materials. Such procedure could include the proposed protective order. We also remind parties of their obligation under Rule 11.3 to first meet and confer in good faith to resolve any discovery disputes.

IT IS RULED that:

1. The scope, issues, and schedule are as set forth in the body of this ruling unless amended by a subsequent ruling or order of the Presiding Officer or assigned Commissioner.

2. Pursuant to Rule 13.2(a) of the Commission's Rules of Practice and Procedure, Administrative Law Judge Jeanne M. McKinney is the Presiding Officer.

3. The preliminary categorization of this proceeding as ratesetting is confirmed. The preliminary determination that there is need for evidentiary hearings is confirmed. This ruling, as to category (only), is appealable pursuant to Rule 7.6.

4. *Ex Parte* communications are prohibited in ratesetting proceedings, except as allowed by Public Utilities Code Section 1701.3(c) and Article 8 of the Rules of Practice and Procedure. *Ex parte* communications with the assigned Administrative Law Judge are not allowed in this proceeding.

5. San Diego Gas & Electric Company is directed to submit the evidentiary exhibits from the two prior proceedings as described in Sections 5 and 9 above.

6. San Diego Gas & Electric Company's Motion for Adoption of a Protective Order is denied.

Dated April 11, 2016, at San Francisco, California.

/s/ LIANE M. RANDOLPH
Liane M. Randolph
Assigned Commissioner

/s/ JEANNE M. MCKINNEY
Jeanne M. McKinney
Administrative Law Judge